- Identifying NXXs Available for Porting
- Porting of Direct Inward Dial Block Numbers
- LIDB De-Provisioning
- Introductory Section Amplification
- Service Management System
- Applicability of "Operations Team" Guidelines
- Database and Query Services
- Ordering Standards
- Managed Cuts
- Maintenance and Repair
- Prices
- Provisioning Intervals

The unresolved issue is discussed in the Workshop Report beginning on page 101. This issue is:

- Coordinating LNP and Loop Cutovers

3. Analysis of Evidence on Unresolved Issues

a. Coordinating LNP and Loop Cutovers

When a customer selects a CLEC as its carrier (and wishes to retain the same phone number) and the CLEC provisions its own loop, if the CLEC fails to have the customer transfer work done by the hour set by Qwest for a disconnect, the customer will suffer a loss of service.

AT&T proposed to solve the problem in various ways; e.g., requiring that Qwest not disconnect until after confirmation of a successful disconnect, performing automated queries to verify number porting before disconnecting, or setting disconnects for 11:59 p.m. of the day after scheduled cutover.

Qwest originally proposed disconnection of its line at 11:59 p.m. on the day the port was scheduled to occur. Although the facilitator recommended in favor of Qwest in this issue, Qwest nonetheless agreed to revise the SGAT to disconnect its line at 11:59 p.m. on the day after the scheduled port. This portion of the issue is now a consensus and the NDPSC adopts the resolution of the parties and finds that Qwest has made this change at Section 10.2.5.3.1 of the SGAT.

The facilitator stated the evidence did not support a finding that Qwest can provide the other types of coordination suggested by AT&T through simple, inexpensive changes in its service-order system or automated querying of Qwest's switches. Nonetheless, the facilitator recommended Qwest should commit to a study of the feasibility and cost of instituting automated means to provide the level of coordination that AT&T seeks.

The NDPSC agrees with the facilitator's recommendation on this portion of the issue and finds that Qwest has committed to the recommended study and states it has already begun the study.

4. Conclusion

Qwest should be deemed to be in compliance with the requirements of Checklist Item 11.

D. Checklist Item 13 – Reciprocal Compensation

1. Background

Reciprocal compensation refers to the method for compensating carriers for transporting and terminating local calls that originate on the network of another carrier. Section 271(c)(2)(B)(xiii) of the Act requires that the incumbent's access and interconnection agreements include reciprocal compensation arrangements that are consistent with the requirements of Section 252(d)(2), which governs the transport and termination of traffic. The latter section states that, in order for these arrangements to be considered just and reasonable, they must provide for the mutual and reciprocal recovery by each carrier of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. The compensation must be determined on the basis of a reasonable approximation of the costs of terminating such calls.

Section 251(b)(5) places the duty on LECs to establish a reciprocal compensation arrangement for transport and termination. Section 51.701 of the FCC rules addresses the scope of the reciprocal compensation:

> *(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.*
>
> *(b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:*
>
> > *(1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission;*

> (2) *telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in Section 24.202(a) of this chapter.*[71]

The FCC has determined that the ILECs transport and termination rate should be used as a presumptive proxy for the CLECs costs of transport and termination. Therefore, reciprocal compensation should be symmetrical and the same rates (i.e., Qwest rates) should apply to both parties.

2. Overview

The parties agreed not to conduct any live examination of witnesses on the issue of reciprocal compensation. Rather, Qwest provided transcripts from the Washington and Colorado workshops involving reciprocal compensation. Those transcripts were made a part of the record here. Interested parties filed briefs on the issues in dispute.

Most of the SGAT language issues were resolved outside of the workshop among the parties. The parties raised a total of 7 issues for resolution during the workshop. Two of those issues were resolved during the parties' briefing and 5 were presented to the NDPSC with the facilitator's proposed resolution.

The issues resolved by the parties are discussed in the facilitator's Report on Checklist Item 13 beginning on page 109. The resolved issues include:

- Tandem Switching Definition
- Including IP Telephony in Switched Access

The unresolved issues are discussed in the Workshop Report beginning on page 111. The issues include:

- Excluding ISP Traffic from Reciprocal Compensation
- Qwest's Host-Remote Transport Charge
- Commingling of InterLATA and Local Traffic on the Same Trunk Groups
- Exchange Service Definition
- Including Collocation in Reciprocal Compensation

3. Analysis of Evidence of Unresolved Issues

a. Excluding ISP Traffic from Reciprocal Compensation

AT&T, Sprint and other CLECs asserted that Qwest was improperly excluding ISP (Internet Service Provider) traffic from reciprocal compensation in the SGAT.

[71] 47 C.F.R. Paragraph 51.701

Qwest argued that reciprocal compensation is for the exchange and termination of local traffic and that ISP traffic is interstate in nature.

After the filing of briefs, the FCC released, on April 27, 2001, an Order on Remand and Report and Order, CC Docket No. 96-98 and 99-68.[72] That Order found that Section 251(g) serves to exclude the traffic at issue here from the reciprocal compensation provisions of Section 251(c).

The facilitator determined that the treatment of ISP traffic as a condition for approval of Checklist Item 13 requirements is inappropriate, as the FCC has asserted jurisdiction over ISP traffic, which therefore precludes states from addressing it. Nonetheless, the facilitator recommended that the SGAT be examined to identify all those areas within the SGAT, which require changes to reflect the FCC's recent Order. The facilitator recommended that the parties provide their proposals for changing the affected Sections of the SGAT. Although AT&T stated in its comments that it is developing a proposal for effecting the changes implicated in the ISP Order, it has not submitted such a proposal. Qwest's compliance SGAT contains provisions, including those at Section 7.3.6 that reflect the FCC's Order.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has adopted SGAT language consistent with the recommendation.

b. Qwest's Host-Remote Transport Charge

AT&T argued that SGAT Section 7.3.4.2.3 improperly requires CLECs to pay tandem transmission rates between a Qwest host switch and a Qwest remote office. AT&T argued that Qwest chose to locate remote switching units in its network for economic purposes, in preference of other alternatives such as digital loop carrier. AT&T stated that Qwest's use of remotes is merely a loop aggregation technique, and that Qwest's host switch is not performing tandem functions for the remote switch.

Alternatively, AT&T argued that CLECs should be permitted to recover their costs for the transport to nodes along a SONET ring because their function is similar; i.e., aggregating individual loops and delivering the traffic to CLEC loops.

Qwest argued that the connection between its host and remote switches is not the equivalent of a local loop. Qwest argued that the remotes switch calls in the areas they cover without having to use the host switch. For calls outside the local area, Qwest must transport such calls along dedicated paths between the host and remote switches. Qwest argued that these "umbilicals" consist of trunks, which, according to accepted industry practice, terminology and costing conventions, constitute interoffice facilities. Qwest was concerned that the CLECs would secure the use of these umbilical trunks

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[72] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 01-131 (Apr. 27, 2001) (hereinafter *Reciprocal Compensation Decision*).

(between the host and remote) for free. Qwest also argued that AT&T's argument for compensation for transport to nodes along the SONET ring is inappropriate in this proceeding, and that AT&T must rely on Qwest's costs and symmetrical transport and termination rates.

The facilitator recommended that, assuming Qwest does not recover the cost of the umbilicals in its loops, it is proper to include them in transport prices. If, however, it should be determined in a cost docket that this assumption is incorrect, then the costs should be removed from the calculation of loop or transport prices as the evidence and argument merit. The facilitator further recommended that AT&T's position on compensation for transport to SONET ring nodes is unsound because Qwest's transport and termination rates must be based on Qwest's costs. If a CLEC wishes to depart from the mutual and reciprocal nature of those costs, then it should present cost studies demonstrating that its own costs are different.

The NDPSC agrees with the facilitator's recommendation.

c. Commingling of InterLATA and Local Traffic on the Same Trunk Groups

There are 2 related issues involved here: commingling of local traffic with InterLATA toll traffic on the same trunk group ("commingling"), and the ability of CLECs to use that commingling to ratchet federal interexchange carrier access rates downward ("ratcheting"). AT&T and WCOM proposed a language change to SGAT Section 7.3.1.1.2 to allow CLECs to use spare special access circuits in trunks they have secured under interstate tariffs and to pay TELRIC prices for those circuits, rather than to continue to pay the rates called for in the federal tariffs under which the CLECs secured the circuits. This language would permit such price "ratcheting" and allow the commingling of InterLATA and local traffic on the same trunk group.

Qwest opposes ratcheting of rates on trunks with commingled traffic and argued that the FCC's *Supplemental Order* and *Supplemental Order Clarification* rejected commingling because of concern about the potential for bypass of special access by using unbundled network elements.[73]

The facilitator stated that this issue is one of balancing efficiency against universal service. The facilitator pointed out that the FCC, along with most state commissions, has identified universal service as an important regulatory goal. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. The facilitator stated that Qwest's proposed SGAT, which permits the use of spare special access circuits for interconnection with the requirement that all circuits used are to be priced at special access rates, provides

[73] *Implementation of Local Competition Provisions in the Telecommunications Act of 1966*, Supplemental Order Clarification, CC Docket No. 96-98, FCC 00-183, (released June 2, 2000) ("*Supplemental Order*").

CLECs the opportunity to enjoy the available efficiencies, but protects the integrity of the pricing system. The facilitator recommended that Qwest's proposal should be adopted.

The NDPSC agrees with the facilitator's recommendation.

d. Exchange Service Definition

AT&T proposed to alter the definition of "Exchange Service" to remove the words "as defined by Qwest then current EAS/local serving areas" in SGAT Section 4.22. AT&T contended that the state commissions determine the boundaries of the local calling areas, and that permitting Qwest to unilaterally modify these definitions inappropriate.

Qwest stated that it recognizes that the Commission has historically managed the boundaries of local calling areas; however, it asserted that the current wording is necessary to preclude future disputes concerning the boundaries.

The facilitator recommended that to make it clear that the Commission will continue to define the boundaries of EAS/local service area boundaries, it is appropriate that Qwest should delete the phrase "as defined by Quest's then-current EAS/local serving areas" in Section 4.22 of the SGAT.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended modification to the SGAT.

e. Including Collocation Costs in Reciprocal Compensation

AT&T argued that several aspects of Qwest's interconnection requirements, e.g., its SPOP proposal, its 50-mile trunk limit, and its restrictions on interconnection at tandems, served to increase AT&T's reciprocal compensation obligations. AT&T also argued that CLECs should be compensated for collocation costs where Qwest traffic traverses CLEC equipment collocated at the Qwest central office.

Qwest argued that the FCC mandates the use of incumbent costs as a proxy for CLEC costs, and therefore, the request contravenes federal law. Furthermore, Qwest argued that no factual basis had been laid to support the request.

The facilitator recommended that the AT&T arguments violate the notion that transport and termination prices should be based on Qwest's costs, except where CLECs, which they have not done here, present studies showing that their own costs are different. AT&T's approach is not consistent with FCC requirements or sound economic theory.

The NDPSC agrees with the facilitator's recommendation.

4. Conclusion

Qwest should be deemed to be in compliance with the requirements of Checklist Item 13.

E. Checklist Item 14 – Resale

1. Background

Section 271(c)(2)(B)(xiv) of the Telecommunications Act of 1996 requires Qwest to make "telecommunications services ...available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3).[74]" Under Section 251(c)(4), Qwest must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[75] In addition, Qwest may not place any "unreasonable or discriminatory conditions or limitations" on the services offered for resale. Section 252(d)(3) provides that the state commissions will "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing collection, and other costs that will be avoided by the local exchange carrier."[76]

2. Overview

The parties raised a total of 42 issues for discussion on Checklist Item 14. Of those issues, 32 were resolved between the parties. Ten issues were unresolved and were presented to the NDPSC with the facilitator's proposed resolution.

The issues resolved between the parties are discussed in the facilitator's Report on Checklist Item 14 beginning on page 120. The resolved issues include:

- Description of Resale Obligation
- Qwest's Purchase of Services from CLECs
- Restrictions on Resale
- Training Materials
- Resale to the Same Class of End User
- Consecutive Promotional Offerings
- Market Trials Not Available for Resale
- 911 Not Available for Resale
- Restrictions on Contract Service Arrangements

[74] 47 U.S.C. §271 (c)(2)(B)(xiv).
[75] 47 U.S.C. §251 (c)(4)(A).
[76] 47 U.S.C. §252 (d)(3).

- Grandfathered Services
- Aggregation of Optional Features
- Separate Centrex Service
- Private Line Service
- Megabit Service Resold From Interstate Tariff
- Forecasts
- Numbering Obligations
- CLEC Payment for Unbranding
- Primary Interexchange Carrier (PIC) Assignments and Slamming
- Nonpayment Claims
- Availability of Resold Services
- Limitations on Resold Services
- Customer Transfer Charges
- Information for Billing CLEC Customers
- Application of Wholesale Discount Miscellaneous Charges
- Notice of Changes to Available Services
- Billing Changes
- Use of Commission-Approved Rates
- Applying the Wholesale Discount to Non-Recurring Charges
- Incorporating Ordering Information By Reference
- Parity Standard Definition
- Billing End Date for Resold Services
- Proofs of Authorization to Change Providers

The unresolved issues are discussed in the Workshop Report beginning on page 131. The issues include:

- Indemnification
- Marketing During Misdirected Calls
- Special Contract Termination Charges
- Electronic Interface for Centrex Resale
- Inaccurate Billing of Resellers
- Ordering and Other OSS Issues
- Other Pricing Issues
- Qwest Centrex Contracts
- Merger-Related PIC Changes
- Breach of Confidentiality Agreements
- Superior Service to Qwest's Internal Sales Force

3. Analysis of Evidence on Unresolved Issues

a. Indemnification

AT&T requested an indemnity provision that would provide for parity of treatment between Qwest retail customers and those served by CLECs who resell Qwest retail services. AT&T proposed the following SGAT language:

> *6.2.3 U S WEST shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that U S WEST provides these services to others, including subsidiaries, affiliates, other Resellers and end users. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding resale are subject to this requirement. In addition, U S WEST shall comply with all state wholesale and retail service quality requirements.*
>
> *6.2.3.1 In the event that U S WEST fails to meet the requirements of Section 6.2.3, U S WEST shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.77*
>
> *U S WEST shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from U S WEST's failure to comply with state retail service quality standards in the provision of resold services.*

Qwest argued that subjecting it to such liability was not a requirement of the resale checklist item, but provided the following SGAT language for a more limited form of liability at Section 6.2.3.1:

> *6.2.3.1 Qwest shall provide service credits to CLEC for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:*
>
> *a) Qwest's service credits to CLEC shall be subject to the wholesale discount;*
>
> *b) Qwest shall only be liable to provide service credits in accordance with the resold services provided to CLEC. Qwest is*

[77] AT&T reserves the right to address its concerns regarding Section 5.9 (Indemnity) of the SGAT in the appropriate multi-state workshop on General Terms and Conditions of the SGAT.

not required to provide service credits for service failures that are the fault of the CLEC;

c) *Qwest shall not be liable to provide service credits to CLEC if CLEC is not subject to the Commission's service quality requirements;*

d) *Qwest shall not be liable to provide service credits to CLEC if CLEC does not provide service quality credits to its end users.*

e) *In no case shall Qwest's credits to CLEC exceed the amount Qwest would pay a Qwest end user under the service quality requirements, less any wholesale discount applicable to CLEC's resold services.*

f) *In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident.*

The facilitator stated that the form of "parity" being sought by AT&T is inappropriate because parity should be measured between Qwest's retail customers and the wholesale customer (the CLEC itself, not the CLEC's customer). The facilitator recommended that the SGAT should include Qwest's proposed language at Section 6.2.3.1, except that subsections (c) and (d) should be eliminated.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended deletions to Section 6.2.3.1 of the SGAT.

b. Marketing During Misdirected Calls

AT&T requested that language be added to SGAT Section 6.4.1 that would limit Qwest's ability to market to CLEC customers who mistakenly contact Qwest with a billing or repair problem. Qwest argued that such a prohibition limits commercial free speech and should not be allowed.

The facilitator noted that Qwest cited a number of precedents regarding rights of commercial free speech, but Qwest did not cite any case that would provide constitutional protection to engage in free speech where the right to such speech has been contracted away; yet that is precisely the context that is at issue here. The facilitator also stated that AT&T's proposed language does not prohibit Qwest from providing product and service information to customers who seek such information, but only applies to calls from customers who are seeking other information. The facilitator determined that AT&T's proposed limitation is appropriate in the context of a commercial relationship in which Qwest serves CLECs. The facilitator recommended that the language AT&T proposes is generally appropriate for inclusion in the SGAT.

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended addition to Section 6.4.1 of the SGAT.

c. *Special Contract Termination Charges*

CLECs raised a concern about termination penalties that Qwest could waive for its own customers who upgrade service but which the CLECs would not be able to waive for their customers. They requested that Qwest be required to provide relief of termination cost liability and waive termination charges for CLECs as resellers.

The facilitator recommended that where Qwest's "rates charged to" its end users under special contracts generally include concessions in the upgrade situations of concern to the CLECs, Qwest should not use a "to the letter" contract interpretation to disadvantage CLECs where its custom would not be to do so for its own end users. The facilitator recommended the following addition to SGAT Section 6.2.2.7:

> *Where CLEC seeks to continue serving a customer presently served through a resold Qwest CSA, but wishes to provide such service through alternate resale arrangements, Qwest shall provide the CLEC the same waivers of early termination liabilities as it makes to its own end users in similar circumstances. In any case where it is required to offer such a waiver, Qwest shall be entitled to apply provisions that provide Qwest substantially the same assurances and benefits that remain to it under the resold agreement as of the time it is changed.*

The NDPSC agrees with the facilitator's recommendation and finds that Qwest has made the recommended addition to Section 6.2.2.7 of the SGAT.

d. *Electronic Interface for Centrex Resale*

A concern was raised regarding the lack of electronic OSS interfaces for the resale of Centrex service.

The facilitator noted there was very little evidence submitted on this issue and recommended that the Commission should not find that the evidence supports a conclusion that Qwest here fails to meet the requirements of Section 271 as they relate to the Resale checklist item.

The NDPSC agrees with the facilitator's recommendation.

e. *Inaccurate Billing of Resellers*

Essen Communications commented that Qwest has been unable to bill resellers accurately. Essen Communications is not an intervenor in North Dakota.

The facilitator recommended this issue is better deferred until completion of the ROC OSS testing.

Tests 19 (Billing Functional Usage Evaluation) and 20 (Carrier Bill Functional Evaluation) of the OSS Final Report evaluated Qwest's accuracy in billing all types of carriers, including resellers. In the OSS Final Report, Test 19 is described in Section 19. *Table 19-1: DUF Resale Ordering Scenarios* specifically identifies resale scenarios evaluated as part of the test. Test 20 is described in Section 20 of OSS Final Report. *Table 20-2: Resale* describes the basic resale scenarios evaluated. The NDPSC will discuss the findings of the OSS Final Report in the *ROC OSS Test* section of this report.

f. Ordering and Other OSS Issues

Essen Communications raised concern regarding order processing but no specific examples of substandard order processing were provided. Essen also criticized the speed, order entry duplication, and reliability of Qwest's IMA system for order entry.

The facilitator recommended that if this issue remains after completion of the ROC OSS test, the participants could address it at that time. This issue was not raised by Essen in comments to the ROC OSS Report.

The NDPSC agrees with the facilitator's recommendation.

g. Other Pricing Issues

Essen Communications raised concerns regarding the Montana wholesale discount rate and the nonrecurring customer transfer charge assessed by Qwest.

The facilitator recommended that these issues should be considered in proceedings that have access to cost information and analyses that underlie prices for such items.

The NDPSC agrees with the facilitator's recommendation.

h. Qwest Centrex Contracts

Essen Communications raised concerns about Qwest's use of long-term contracts and the application of termination charges for Centrex service.

The facilitator recommended there is no evidence of record to support a conclusion that such contracts or charges are inappropriate, or that Qwest has used them to disadvantage competitors.

The NDPSC agrees with the facilitator's recommendation.

i. Merger-Related PIC Changes

Essen Communications stated that Qwest's request for resellers to move all of their accounts from one PIC code to another during the Qwest/US West merger demonstrated how Qwest interferes with the ability of CLECs to compete efficiently.

The facilitator recommended that the evidence shows this was a one-time problem for which Qwest compensated CLECs for the efforts required to accommodate Qwest's system limitations.

The NDPSC agrees with the facilitator's recommendation.

j. Breach of Confidentiality Agreements

Essen Communications provided two examples of billing situations that breached confidentiality agreements.

Qwest responded that it has been working on improving its billing processes and has provided additional training and bill format changes to assure that bills will be sent to the correct party only.

The facilitator recommended that the lack of evidence that such problems have continued after the Qwest changes support a conclusion that Qwest has responded to the need for corrections.

The NDPSC agrees with the facilitator's recommendation.

k. Superior Service to Qwest's Internal Sales Force

Essen Communications complained that short-term promotions were not being offered to CLECs at a discount.

The facilitator recommended there was no evidence that Qwest failed to conform to the applicable requirements for the availability of and application of discounts during short- and long-term promotions.

The NDPSC agrees with the facilitator's recommendation.

4. Conclusion

Qwest should be deemed to be in compliance with the requirements of Checklist Item 14.

F. Common Issues

1. Overview

Several parties raised issues that addressed a number of the checklist items within the scope of the Workshop Report. Those issues included:

- Lack of Available Facilities
- The Need for a "Real World" Test of Qwest's Performance

2. Analysis of Evidence

a. Lack of Available Facilities

Concern was expressed regarding collocation delays because of a lack of facilities.

The issues of delays in service, for whatever reason, are addressed in the performance measures that are set forth in the Service Performance Indicator Definitions (PID), which have been developed as part of a collaborative effort involving the state commissions that form the ROC, Qwest, and the CLEC community.

The facilitator recommended that issues of delays should be addressed when efforts regarding OSS testing by the ROC, and the results of current workshops addressing the PEPP, are at or near completion.

This issue is deferred to the OSS and PAP proceedings.

The OSS Final Report, Test 14 (Provisioning Evaluation) was a review of Qwest's ability to provision Competitive Local Exchange Carrier (CLEC) orders on time and according to documented methods and procedures. The results of Test 14 are set forth in *Table 14-4 Evaluation Criteria and Results*. In addition, Test 14.7 (Provisioning Process Parity Evaluation) determined "the extent to which wholesale processes and systems are in parity with those used by Qwest's retail operations." The NDPSC will discuss the findings of the OSS Final Report in the *ROC OSS Test* section of this report.

b. The Need for a "Real World" Test of Qwest's Performance

The Wyoming Consumer Advocacy staff argued that Qwest cannot be deemed to have met the 271 checklist requirements absent some period of operation during which tangible evidence of its commitment to open its local market will accumulate.

There is no firm requirement that such a test period take place prior to a checklist compliance determination. The facilitator stated there has not been substantial evidence to support the notion that Qwest's performance is so profoundly inadequate as to make reliance upon OSS tests and post-entry assurance plans inadequate for this proceeding. In fact, despite repeated efforts to induce CLECs to bring evidence about the nature of their relationship with Qwest to the workshops, not much information in that regard has been forthcoming. The facilitator recommended that we must look largely to the OSS test and the PEPP to guide judgments on performance issues. The Commission through its procedural order has created the means for doing so.

Qwest states that this issue appears to call into question the efficacy of the ROC OSS test and the PAP proceedings. As such, Qwest suggests that the NDPSC consider that KPMG has performed a comprehensive and thorough evaluation of Qwest's OSS. In addition, State commissions, as well as CLECs, participated in designing the test and ensuring that it addressed any concerns they raised. Qwest concludes that KPMG's independent third party evaluation, together with Qwest's actual commercial performance results and the assurances of the PAP form a more than ample foundation upon which the NDPSC can base its determination on this issue.

The NDPSC agrees with Qwest's conclusions on the "real world" test issue and in addition believes it can rely on its PAP and PID change authority when necessary.

4. Conclusion

Qwest should be deemed to be in compliance with the Group 2 Checklist item numbers 1 (interconnection and collocation), 11 (local number portability), 13 (reciprocal compensation) and 14 (resale).